

## SCHEDULE 5

Article 8

### FURTHER PROVISION ABOUT TRANSFER OF ASSETS

#### 1. In this Schedule—

- (a) “Assets” means any of the property and rights held for the purposes of the RMPP, whether held by or on behalf of or for the benefit either of the Trustee in its capacity as trustee of the RMPP or any Relevant Trustee, but excluding any Assets that are also Claims. Assets include—
- (i) Cash;
  - (ii) property and rights that would not, but for the provisions of this Schedule, be capable of being transferred or assigned;
  - (iii) property situated anywhere in the United Kingdom or elsewhere;
  - (iv) contractual rights, other than contractual rights and liabilities in respect of a service provider to the Trustee, an adviser or employee of either the Trustee or the premises and operations of the Trustee, but including those contracts referred to in paragraph 9 and contracts relating to any property referred to in Paragraph (iii) above; and
  - (v) rights under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom, whether or not those rights and liabilities are ascertained at the time a Transfer occurs.

References to Assets in this Schedule do not include Assets which will not comprise a Transfer;

- (b) “Claim” means a right of action of the Trustee in issue in any action before a court or adjudicatory body in the United Kingdom or abroad (whether existing, ongoing, contemplated, threatened or potential), including a right that would not, but for the provisions of this Schedule, be capable of being transferred or assigned, and that is related to or connected with—
- (i) any Asset that is transferred to the Fund under paragraph 2 or 5(2) or to which paragraph 7 applies;
  - (ii) any contract to which paragraph 9 or 10 applies; or  
any tax paid or payable by the Trustee, or which any revenue authority asserts is so payable, in respect of the Assets transferred to the Fund under paragraph 2 or 5(2) or to which paragraph 7 applies, or in respect of the services to which any contract to which paragraph 9 or 10 relates;
- (c) “Relevant Trustee” means any person (other than the Trustee) who is acting in the capacity of a trustee or custodian of or nominee for the RMPP;
- (d) subject to paragraph (f)—
- (i) a reference to the transfer of an Asset to the Fund shall mean the transfer to and vesting in the Fund of title to, beneficial interest in and any rights in respect of that Asset;
  - (ii) a reference to the transfer of a Claim to the Fund shall mean the transfer to and vesting in the Fund of title to, beneficial interest in and any rights and liabilities or other obligations in respect of that Claim, including rights that would not otherwise be capable of being transferred or assigned; and
  - (iii) a reference to the transfer of any Associated Liability to the Fund shall mean the transfer to and vesting in the fund of any liabilities or other obligations in respect of that Associated Liability;

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- (e) in relation to the assets listed at paragraph 2 of Schedule 6, and any Associated Liabilities in respect of those assets, and any Claim that is related to or connected with those assets, a reference in the provisions of this Schedule to the Fund shall be read as a reference to the Fund Subsidiary; and
- (f) if any Assets are held by or on behalf of or for the benefit of a Relevant Trustee, a reference in the provisions of this Schedule to the Trustee shall be read as a reference to the Relevant Trustee in relation to those Assets, any Associated Liabilities in respect of them, and any Claim related to or connected with them.

### **Obligation to transfer Assets**

2.—(1) The Trustee must transfer the Assets comprising the Transfers and each Associated Liability to the Fund or procure the transfer of the Assets comprising the relevant Transfer and each Associated Liability to the Fund.

(2) The Trustee must transfer the Assets and each Associated Liability that relates to them on or as soon as reasonably practicable after—

- (a) the Effective Date if the Assets comprise part of the Interim Transfer, or
- (b) the Final Transfer Date if the Assets comprise part of the Final Transfer.

(3) This paragraph does not apply in respect of Assets or Associated Liabilities to which paragraph 4, 5, 6 or 9 apply.

3. Until the time that an Asset comprising a Transfer and any Associated Liability that relates to it, is transferred, paragraph 7 shall apply in respect of that Asset and Associated Liability, unless the Fund has served a notice under paragraph 4(3).

### **Where transfer would incur material cost**

4.—(1) If the Trustee considers, for any reason, that a transfer to the Fund of any Asset would (notwithstanding paragraphs 12 and 13) incur or require a material charge, penalty or market value adjustment or otherwise materially reduce the value of the Asset or incur or require a material charge or penalty under or cause the termination of any agreement ancillary to or connected with such Assets—

- (a) the Trustee must not transfer the Asset or any Associated Liability related to it until the Fund has provided consent for the Asset and Associated Liability to transfer; and
- (b) until the Asset transfers, paragraph 7 applies in respect of that Asset and any Associated Liability related to it.

(2) The Trustee must provide written confirmation to the Fund if it considers that an Asset falls within this paragraph.

(3) Upon receipt of the written confirmation under sub-paragraph (2), the Fund may serve a notice on the Trustee that paragraph 7(a) does not apply to that Asset.

### **Where the Trustee is unable to transfer an Asset**

5.—(1) This paragraph applies to an Asset that the Trustee is (or, but for this paragraph, would be) unable to transfer because—

- (a) there is a legal requirement to obtain the consent of a third party; or
- (b) any other legal restriction applies.

(2) If an Asset falls within this paragraph and it is not constituted by any foreign property or right, either—

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- (a) in respect of any such Asset that is constituted by rights under any contract, trust or other arrangement, the Fund will become a party to that contract, trust or other arrangement, in place of and on the same terms as applied to the Trustee immediately before that time on the first business day after the Effective Date or the Final Transfer Date; or
  - (b) in respect of any such Asset not falling within (a), this sub-paragraph applies to override the legal requirement or restriction described in sub-paragraph (1), and the Trustee shall take all reasonable steps to transfer the asset as soon as is practicable.
- (3) Paragraph 7 applies in respect of an Asset that falls within this paragraph and is constituted by any foreign property or right and any Associated Liability related to that Asset, until that Asset transfers.
- (4) The Trustee must provide written confirmation to the Fund if it considers for any reason that an Asset falls within this paragraph, specifying whether the Asset falls within sub-paragraph (2)(a), 2(b) or (3).

**6.—(1)** This paragraph applies where the Trustee is unable to transfer any Associated Liability because—

- (a) there is a legal requirement to obtain the consent of a third party; or
  - (b) any other legal restriction applies.
- (2) If an Associated Liability falls within this paragraph and it is not constituted by any rights or obligations arising under foreign law, either—
- (a) in respect of an Associated Liability that is constituted by rights under any contract, trust or other arrangement, the Fund will become party to that contract, trust or other arrangement, in place of and on the same terms as applied to the Trustee immediately before that time; and
  - (b) in respect of an Associated Liability not falling within (a), this sub-paragraph applies to override the legal requirement or restriction described in sub-paragraph (1), and to the extent that the Associated Liability does not transfer with the Asset to which it relates, the Trustee shall take all reasonable steps to transfer the Associated Liability as soon as is practicable.
- (3) Paragraph 7 applies in respect of an Associated Liability that falls within this paragraph and is constituted by rights or obligations arising under foreign law, until that Associated Liability transfers.
- (4) The arrangements provided for by paragraphs (a) and (b) above shall take effect at the following time in respect of each Associated Liability—
- (a) in the case of an Associated Liability that relates to an Asset which the Trustee transfers to the Fund under paragraph 2 or 5(2)(b), or to which paragraph 5(2)(a) applies, at the time that the transfer takes effect in respect of the Asset; and
  - (b) in the case of an Associated Liability that relates to a Claim which the Trustee transfers to the Fund under paragraph 8, at the time that the transfer takes effect in respect of the Claim; and
  - (c) in the case of an Associated Liability that relates to a contract to which paragraph 9 or 10 applies, at the time the arrangements provided for in the relevant paragraph come into effect in respect of that contract.
- (5) The Trustee must provide written confirmation to the Fund if it considers for any reason that an Associated Liability falls within this paragraph, specifying whether the Associated Liability comes within sub-paragraph (2)(a), 2(b) or (3).

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### **Assets to be held on trust and discharge of Associated Liabilities**

7. In relation to any Asset or Associated Liability to which this paragraph applies, the Trustee must, with effect on and from the first business day after the Effective Date or the Final Transfer Date, as applicable—

- (a) hold that Asset, and any proceeds of or income derived from that Asset, on trust for the benefit of the Fund;
- (b) deal with, exercise rights under or apply that Asset at the direction of the Fund;
- (c) transfer to the Fund (or apply at the Fund's direction in relation to the Asset) any proceeds of or income derived from that Asset; and
- (d) discharge that Associated Liability on behalf of the Fund.

### **Transfer of Claims**

8. Claims, and each Associated Liability related to them, transfer from the Trustee to the Fund as follows—

- (a) in relation to any Claim before any court or other adjudicatory tribunal in the United Kingdom, other than any Claim that relates to an Asset to which paragraph 4 or 5(3) applies, the interest in the Claim and any Associated Liability related to it will pass from the Trustee to the Fund and the Fund is deemed to be substituted for the Trustee as a party to the Claim;
- (b) in relation to any Claim before any foreign court or adjudicatory tribunal, or any Claim that relates to an Asset to which paragraph 4 or 5(3) applies, the Trustee must as soon as practicable take such steps as are reasonably available and advisable under applicable law to transfer the interest in the Claim and any Associated Liability related to it, and enable the Fund to pursue or defend the Claim in substitution for the Trustee, and until such time, if any, that the Claim is transferred and the Fund is substituted, paragraph 7 shall apply as if the references to an Asset were to a Claim; and
- (c) the arrangements provided for by paragraphs (a) and (b) above shall take effect at the following time in respect of each Claim—
  - (i) in the case of any Claim that relates to an Asset which the Trustee is able to transfer to the Fund under paragraph 2, at the time that the transfer takes effect in respect of the Asset;
  - (ii) in the case of any Claim that relates to an Asset to which paragraph 5(2) applies, at the time that the transfer takes effect in respect of the Asset;
  - (iii) in the case of any Claim that relates to an Asset to which paragraph 7 applies, at the time that paragraph takes effect in respect of that Asset;
  - (iv) in the case of any Claim that relates to a contract to which paragraph 9 or 10 applies, at the time the arrangements provided for in the relevant paragraph come into effect in respect of that contract; and
  - (v) in the case of any Claim that does not relate to any specific Asset, on the first business day after the Effective Date.

(2) The Trustee must provide written confirmation to the Fund where a Claim falls within this paragraph, specifying whether the Claim comes within sub-paragraph (1)(a) or (b).

### **Transfer under investment management agreements**

9. Rights and liabilities of the Trustee under or in respect of contracts relating to the investment management of Assets which are transferred to the Fund in their entirety under article 5 or 6 are

novated to the Fund on the first business day after the Effective Date or the Final Transfer Date, as applicable, and—

- (a) the Trustee will have no continuing rights and liabilities under the original contract;
- (b) the Fund is deemed to have been party to the agreement in place of the Trustee from the commencement of the agreement, and assumes all rights and liabilities accrued under the agreement, including any liabilities which become payable after the novation of the agreement becomes effective.

**10.**—(1) Where a service is provided by a person to the Trustee under a contract relating to the investment management of assets of the RMPP and only part of those assets are transferred to the Fund under this Order, the Trustee must, if required by the Fund—

- (a) use the service for the benefit of the Fund, or a nominee of the Fund, in whole or in part; or
- (b) provide for the Fund, or a nominee of the Fund, to enjoy the benefit, in whole or in part, of that service.

(2) The Trustee must serve a notice to a person providing a service under a contract that falls under this paragraph explaining the Fund’s requirements under sub-paragraph (1).

(3) Upon receipt of a notice under sub-paragraph (2), a person providing a service under a contract that falls under this paragraph must provide the service to the Fund, directly, to the extent specified in such notice.

### **General provision**

**11.** Paragraphs 5, 6, 7, 8, 9 and 10 of this Schedule are binding on all persons, even if, apart from these paragraphs, the provisions made by them would have required the consent or concurrence of any person.

**12.** Save as otherwise provided by this Order, no interest or right of any third party arises or becomes exercisable in respect of any property, right or liability of the Trustee (whether or not transferred by this Order) by virtue of or in connection with—

- (a) the making of this Order,
- (b) anything done by, under, by virtue of or in consequence of this Order, or
- (c) anything omitted to be done by virtue of or in consequence of this Order.

**13.** Save as otherwise provided by this Order, no liability or obligation arises or is incurred by any third party in respect of any property, right or liability of the Trustee (whether or not transferred by this Order) by virtue of or in connection with—

- (a) the making of this Order,
- (b) anything done by, under, by virtue of or in consequence of this Order, or
- (c) anything omitted to be done by virtue of or in consequence of this Order.

**14.** Any reference in any agreement, document or instrument of any description to the Trustee (or any other person who is or was trustee of the RMPP at the time such agreement, document or instrument was entered into) has effect as a reference to the Fund so far as necessary for the purposes of giving effect to paragraphs 5(2)(a), 6(2)(a), 7, 8 and 9 of this Schedule.

**15.** The Trustee must, as soon as reasonably practicable after the completion of each of the Transfers, provide to the Fund written confirmation of—

- (a) the Assets that have been transferred,
- (b) the contracts to which paragraphs 9 and 10 apply.